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June 10, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Bay State Gas Company, D.T.E. 05-27

Dear Ms. Cottrell:

Enclosed is the Opposition of Bay State Gas Company to the Notice of, and Motion for, Depositions from Local 273, Utility Workers Union of America, AFL-CIO.

Very truly yours,

Robert L. Dewees, Jr.

RLD/tlm
Enclosure

cc: Caroline M. Bulger, Hearing Officer (1 copy)
John Sullivan, DTE (7 copies)
Andreas Thanos, Assistant Director, Gas Division (1 copy)
Alexander J. Cochis, Assistant Attorney General (4 copies)
Service List

**THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Bay State Gas Company)
For Approval of Revised Tariffs)
And Other Rate Modifications)

D.T.E. 05-27

**OPPOSITION OF BAY STATE GAS COMPANY TO THE NOTICE
OF, AND MOTION FOR, DEPOSITIONS FROM LOCAL 273,
UTILITY WORKERS UNION OF AMERICA, AFL-CIO**

On June 2, 2005, Local 273, Utility Workers Union of America, AFL-CIO

(Local 273) filed a motion to take the depositions of seven Bay State Gas Company (“Bay State”) witnesses in this proceeding: Stephen Bryant, John Skirtich, Stephen Barkauskas, Danny Cote, Joseph Ferro, Lawrence Kaufmann and Paul Moul. After filing its Motion, counsel for Local 273 conferred with counsel for Bay State to determine if Bay State would agree to a single deposition of Bay State’s President, Stephen Bryant. Bay State did not agree to a deposition of Mr. Bryant.

Bay State opposes Local 273’s request for depositions, because the taking of depositions in this proceeding, which is conducted under a six-month statutory rate suspension deadline, would unduly complicate and burden the conduct of the proceeding without any corresponding benefit. It would also increase the time required for witness testimony, than otherwise would be the case, and thereby increase rate case expenses for all parties. Furthermore, Local 273 has failed to demonstrate any compelling need for depositions in this proceeding, and Bay State has already committed to undertaking all reasonable efforts to insure that its witnesses are available in the hearings to allow parties ample opportunity to examine them. Local 273 proposes to take depositions of almost all of Bay State’s witnesses, who also must appear as witnesses in the hearings scheduled by the

Department. Such a procedure would create an unworkable duplication of witness testimony that could not be accommodated with the six month deadline for this case.

A deposition of Mr. Bryant, would not be necessary, practical or efficient as Bay State proposed at the procedural conference for this case to make him available as a witness at different times during the hearing scheduled in order to accommodate the parties' and the Department's need to examine him.

The Department's standard rate case ground rules and discovery procedures are far better suited to the requirements of the investigation that must be conducted by the Department in this proceeding than the procedure suggested by Local 273 involving the taking of depositions of almost all of the Bay State witnesses. The discovery practice that utilizes depositions in civil litigation under the Massachusetts Rules of Civil Procedure conflicts with the Department's need for administrative efficiency within a six-month statutory deadline.

The Department's procedural rules permit the taking of depositions if there is agreement by all parties to do so or by order of the presiding officer. 220 CMR 1.06(6)(c)6.a. However, depositions are permitted only if "the taking of a deposition will be more efficient than other available discovery methods, and will not unduly burden the affected parties." 220 CMR 1.06(6)(c)6.b. It has been the Department's practice to permit depositions in its proceedings only rarely, and no depositions have been taken in recent rate cases before the Department.

Although Local 273 states that depositions will expedite the discovery process and reduce hearing time, it provides no support for this statement, and the opposite clearly would be the case. The taking of the depositions requested by Local 273 would be significantly less

efficient than standard Department discovery practice and would unduly burden all parties and the Department with duplicate procedures.

The Department has developed discovery procedures and ground rules over many years that have enabled it to conduct rate case proceedings as efficiently as possible within the six-month deadline for these cases. In contrast, depositions are used by parties in civil litigation in the Courts of the Commonwealth under discovery rules that are significantly different from the rules applicable to rate case proceedings before the Department. Under the Massachusetts Civil Rules of Procedure, there is a limit of 30 written interrogatories, and although there are case tracking schedules, there is no date certain by which a case must be concluded. Depositions are the primary source of discovery, are generally unlimited in number and can be taken over an extended period of time. See generally, Mass. R. Civ. P. Rules 26 and 30.

However, the Department's rules and procedures followed in rate cases eliminate the need for depositions. A rate case begins with the filing of extensive prepared testimony and supporting schedules and documentation. Parties are permitted an almost unlimited opportunity to submit written discovery with the opportunity for follow up written discovery. Parties also have the opportunity to conduct extensive cross-examination of witnesses and to pose, and receive responses to, oral record requests during evidentiary hearings. This procedure is well suited to rate case investigations, where much of the record developed by the Department and the parties consists of financial, accounting and economic data. These discovery procedures serve the purpose that is provided by depositions in civil litigation. Local 273 has failed to show that the Department's traditional discovery procedures are not adequate in the circumstances of this proceeding. Finally, the six-month statutory deadline within which rate cases must be conducted makes the taking of depositions, in addition to the

public and evidentiary hearings which must be held by the Department and the time required to respond to voluminous information requests, unfeasible.

There are a number of procedural issues associated with the taking of depositions that make them unsuited to this rate case proceeding. Any party can attend and examine the witness in a deposition, and given the large number of parties in this case, the taking of depositions could add many hours and even days of testimony to an already tight hearing schedule. Mass. R. Civ. P. Rule 30(c). In its Motion, Local 273 has invited all parties to attend and examine the witnesses in its proposed depositions. In a deposition, objections may be made but are generally not argued until trial. See generally, Id. Since there is no presiding officer in a deposition to rule on issues such as relevance and repetitiveness of questioning, there is no practical way to limit irrelevant, repetitious or otherwise objectionable testimony, and deposition testimony could extend far longer than otherwise would be permitted if the testimony were presented before a Department hearing officer.

There would also likely be time consuming procedural issues presented to the Department as a result of offers to introduce all, or portions of, deposition testimony into the record, including objections and comments on the proposed use of such deposition testimony. Local 273's proposal that seven of Bay State's witnesses be deposed in addition to appearing at the evidentiary hearings would result in a substantial duplication of testimony. Given the investigatory nature of rate case proceedings, and the duty of the Department to develop a complete and accurate record in the compressed time within which rate cases are conducted, it is important that the Department be present at all testimony given, so that, at a minimum, it can ask clarifying questions and to ensure that the record is accurate and complete.

The Department has permitted depositions in certain situations, but it would appear those have been limited cases where the proceeding involved was not governed by a six-

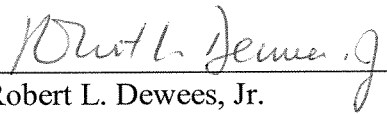
month statutory deadline. New England Telephone and Telegraph Company, Investigation by the Department into the Propriety of the Cost Studies filed in April, 1986, D.P.U. 86-33-L (August 23, 1989) (order issued almost one year after revised cost study was filed).

For the reasons stated above, the taking of depositions in this proceeding would be inefficient, duplicative of the scheduled evidentiary hearings, would drive up the rate case expenses for all participants and would overburden an already compressed schedule. Given the extensive written and oral discovery that is permitted under the Department's rules, Local 273's Motions should be denied.

Respectfully submitted,

BAY STATE GAS COMPANY

By its attorneys,



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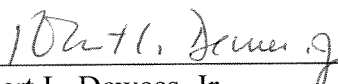
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Dated: June 10, 2005

CERTIFICATION

I certify that I served today a copy of the attached Opposition of Bay State Gas Company to the Notice of, and Motion for, Depositions from Local 273, Utility Workers Union of America, AFL-CIO by hand delivery, first class mail postage prepaid or electronically on the Department of Telecommunication and Energy and all parties on the service list on file with the Secretary of the Department of Telecommunication and Energy for this proceeding.

Dated at Boston, Massachusetts this 10th day of June, 2005



Robert L. Dewees, Jr.